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In the Supreme Court of the United States

OCTOBER TERM, 1980

MOREHOUSE PARISH SCHOOL BOARD, ET AL,
PETITIONERS

VS.

JOHNNIE PEGUES
RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

After a once segregated school district had been functioning smoothly on a unitary basis for a number of years are the equitable entitlements granted professional staff employees under *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970) (en banc), rev'd in part sub nom. *Carter v. West Felicina Parish School Board*, 396 U.S. 290 (1970) barred by the passage of time of five years and longer.

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REFERENCE TO REPORT OF OPINION OF COURT BELOW

The opinion of the United States District Court for the Western District of Louisiana is not reported. The decision of the United States Court of Appeals for the Fifth Circuit is reported as *Pegues v. Morehouse Parish School Board* , 632 F.2d 1279 (5th Cir. 1980)

GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

The decision of United States Court of Appeals in question was rendered December 18, 1980. 28 U.S.C. Sec. 1254 confers, upon this Court, jurisdiction to review said decision by writ of certiorari.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

STATEMENT OF CASE WITH FACTS MATERIAL TO QUESTION PRESENTED

On March 3, 1978 Johnnie Pegues filed an action in the United States District Court for the Western District of Louisiana

against the Morehouse Parish School Board and its members alleging that the defendants demoted him and refused to promote him for racially discriminatory reasons in violation of 42 U.S.C. Section 1983. The District Court found that the claims brought pursuant to 42 U.S.C. Section 1983 were time-barred by the passage of one year. Mr. Pegues appealed and the United States Court of Appeals for the Fifth Circuit affirmed.

Mr. Pegues also alleged noncompliance of the requirements of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970) (en banc), rev'd in part sub nom. *Carter v. West Felicina Parish School Board*, 396 U.S. 290 (1970) The District Court found that the claims of the plaintiff brought pursuant to *Singleton* were barred by the passage of time.

The respondent is a black coach and tenured teacher who was first employed by the Morehouse Parish School System in the 1965-66 school year as a head football coach at the all black Morehouse High School in Bastrop, Louisiana. In the 1969-70 school year, the schools in Bastrop, Louisiana were integrated pursuant to court order; Morehouse High School was converted to a junior high school and Mr. Pegues was assigned as an assistant football coach at the formerly all white Bastrop High School. The head football coach at Bastrop High School remained for the 1969-70 school year. He thereafter resigned his position and another white individual was hired as head football coach at Bastrop High School for the 1970-71 school year and he continued to serve

in that capacity for the next two school years. He then resigned the position and for the 1972-73 school year a white individual was hired as head football coach at Bastrop High School who resigned the position at the conclusion of that school year. Beginning with the 1973-74 school year through the date that plaintiff filed his complaint, a third individual has served as head football coach at Bastrop High School. Mr. Pegues was never formally offered the job of head football coach and he continued as assisttant coach through the 1977-78 school year at which time he was named head track coach.

The respondent filed his complaint nine years after his initial *Singleton* demotion, eight years after he was first passed over for promotion, and five years after the last alleged discriminatory promotion of a white to the position of head football coach.

The respondent did not file any action at the time of his original alleged *Singleton* demotion in 1969 or at the time of any of the coaching changes. Instead he waited until nine years after the alleged *Singleton* demotion, eight years after the first coaching changed, and five years after the most recent change to file his complaint. The District Court, upon the Motion for Summary Judgment filed by defendants, found that the *Singleton* claims of Mr. Pegues were also barred by the passage of time. The United States Court of Appeals for the Fifth Circuit reversed and remanded holding that a traditional laches

inquiry was the proper vehicle in which to conduct a determination as to whether the *Singleton* claims of the plaintiff were time-barred even though those claims of the respondent were made long after the Morehouse Parish School System had been functioning as a unitary system and five years after the last alleged *Singleton* violation.

The Fifth Circuit as well as the District Court, found and held that this specific question of federal jurisprudential law had not previously been ruled upon by any court . Petitioners urge that this issue should be settled by this court because of the obvious great implications of the issue to all school systems which have undergone the conversion from dual system to a unitary one. Petitioners further aver that the decision of the Court of Appeals is contrary to previous decisions of this court in which other actions brought in equity were barred as a result of the passage of time.

ARGUMENT FOR ALLOWANCE OF WRIT

The applicable portion of *Singleton v. Jackson Municipal Separate School District,* supra, is stated at 419 F.2d at 1218 as follows:

> "If there is to be a reduction in the number of principals, teachers, teacher-aids, or other professional staff employed by the school district which will result in dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-

> discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so."

For the purposes of the summary judgment motion before the District Court, Mr. Pegues was considered to be a professional staff employee subject to the requirements stated above in *Singleton* and should have been offered the first available vacancy after his alleged demotion from head football coach at Morehouse High School.

The *Singleton* criteria are "aspects of equitable remedies, designed by (the) Court under its general equitable power to fashion relief for constitutional violations (in this case, maintenance of a segregated, dual school system) in accordance with the principles of fairness and with a minimum of hardship to persons affected by large scale, court-ordered social-change." *Hardy v. Porter,* 546 F.2d 1165, 1168, rehearing (en banc) denied, 550 F.2d 41 (5th Cir. 1977).

An individual who is guilty of inequitable conduct is not entitled to the benefits of *Singleton. Lee v. Walker County School System,* 594 F.2d 156, 158 (5th Cir. 1979) Respondent's conduct was inequitable as defined by previous decisions of this court.

The record is clear that Mr. Pegues continued to accept the benefits of his high paying assistant coaching position; that is, he continued to receive the same salary as the head football coach but without the pressures of head coaching and he also received extra pay for teaching driver's education classes during the summer months just as the head football coach while other assistant coaches were looking for other sources to supplement their income. Mr. Pegues took no action whatsoever to assert any of his alleged *Singleton* claims until at least five years after the last coaching change relevant to this litigation and he "stood by and witnessed the expenditure of large sums of money upon the property (school board funds) and did nothing exhibiting an intention to assert (his) supposed rights. (Under) such circumstances . . . those claiming under them are not entitled to equitable relief." *Gildersleeve v. New Mexico Min. Co.*, 161 U.S. 573 (1896)

This court has long held that when one calls upon a court of equity, and especially upon a jurisprudentially created equitable right, the person seeking such relief must seek the relief promptly. "A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his right, and acquiesed for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and *reasonable diligence.*" *New York v. Pine*, 185 U.S. 93 (1902). This

court has further held in a similar vain that, "courts of equity do not sit to restore opportunities or renew possibilities which have been permitted to pass by the neglect, the ignorance, or even the want of means of those to whom they were once presented . . . These conclusions made it unnecessary to consider the defenses of the statute of limitations and of laches, as urged by appellees." *Leavenworth County v. Chicago, R.I. & P. Ry. Co.*,, 134 U.S. 688 (1890)

Petitioners aver that, "The application of *Singleton* in this case would turn the pages of history back too far." *Lee v. Attalla City School System,* 588 F.2d 499, 500 (5th Cir. 1979)

In *Lee* the court did hold that *Singleton* criteria do not extend in perpetuity. In *Holmberg v. Armbrecht,* 327 U.S. 392, 395 (1946) Justice Frankfurter succinctly stated that:

> "If Congress explicitly puts a limit upon the timefor enforcing a right which is created, there is an end of the matter. The congressional statute of limitations is definitive . . . . The rub comes when Congress is silent. Apart from penal enactments, Congress has usually left the limitation of time for commencing actions under national legislation to judicial implications."

Likewise the *Singleton* mandates are judicially created rights which have no specific period of limitations and are only equitable in nature.

There is obviously no state statute of limitations in Louisiana that deals with *Singleton* claims. However as the United States Court of Appeals for the Fifth Circuit found in the portion of the decision in this case dealing with the claims of the plaintiff brought pursuant to 42 U.S.C. Section 1983, such Section 1983 claims are barred by the passage of time of one year in Louisiana. *Page v. U.S. Industries, Inc.*, 556 F.2d 346 (5th Cir. 1977), cert. denied, 434 U.S. 1045 (1978)

The Court of Appeals however held that a laches inquiry must be made. Such a ruling is contrary to the jurisprudence of this court. "In federal courts of equity the doctrine of laches was early supplemented by the rule that when the question is of lapse of time barring relief in equity, such courts, even though not regarding themselves as bound by state statutes of limitations, will nevertheless, when consonant with equitable principles, adopt and apply as their own, the local statute of limitations applicable to the equitable causes of action in the judicial district in which the case is heard." *Russell v. Todd*, 309 U.S. 280, 288 (1944)

In *Russell v. Todd*, supra at p. 289 this court held in pertinent part that: "Even though there is no state statute applicable to similar equitable demands, when the jurisdiction of the federal court is concurrent with that at law . . . equity will withhold its remedy if the legal right is barred by the local statute of limitations." Clearly the claims of the plaintiff in this

action are barred by the local Louisiana statute of limitations which was applied to the Section 1983 claim. This court again stated in *Cope v. Anderson*, 331 U.S. 461, 463-64 (1947) that, "Equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy." The same logic is clearly applicable to the issue regarding the *Singleton* claims of respondent.

The District Court in its opinion recognized the reasoning for its action and the logic of the decisions barring stale claims as those made in this litigation wherein the Court stated,

> "For plaintiff did not file this action at the time of his demotion or of any of the coaching changes. Instead for reasons known best to himself, he waited until nine years after the demotion, eight years after the first coaching change, and five years after the most recent coaching change, until a time when the Morehouse Parish School System has long been functioning smoothly in a unitary status. Mr. Pegues now asks this court to enter an order which, rather than promoting the just and orderly transition of the school system, will revive the very antagonisms which all parties have sought so diligently to dissipate; and this, without any finding of discrimination against him. The court cannot conclude that the rules set down in *Singleton* were intended to have this result.
>
> It bears emphasizing that this ruling does not deprive Mr. Pegues of a remedy for any wrong he may have suffered, but only of a benefit to which he is no longer entitled. First, his claims of racial discrimination, both in

demoting and in failing to promote him, have been barred by the applicable statute of limitations for several years. Second, the rules stated in *Singleton* were not based on evidence of any discrimination in demoting or dismissing black educators during desegration. Rather, *Singleton* sought to spare distinct class of persons the burden of proving individual acts of discrimination, by anticipating the occurrence of discrimination and ordering the appropriate remedial steps.

. . .

As the goals motivating *Singleton* would be diserved by the extension of its rules to this case, plaintiff's second claim must also be dismissed."

Singleton rights are not constitutional rights but are jurisprudentially created rights giving rise to certain equitable remedies. *Hardy v. Porter*, supra. 546 F.2d at 1168 The District Court being well versed with the desegration process of the school districts in the Western District of Louisiana, as well as the implications involved therewith, held that Mr. Pegues' claims under the federal jurisprudential law of *Singleton* should be barred because of respondent's long delay and the change in circumstances since respondent's original demotion and since Singleton was decided. Previously cited decisions

by this court support the District Court's view that respondent's inequitable conduct bars his seeking of purely equitable relief. Actions are barred by the passage of "a reasonable time in the interest of society, serving to prevent perjuries, frauds, and mistakes." *Blair v. Page Aircraft Maintenance, Inc.*, 467 F.2d 819 (5th Cir. 1972) Respondent has never alleged nor can one logically state that a preiod of five to nine years is not more than a reasonable time in which to assert such a claim.

The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the applicable decisions of this court regarding the dismissal of stale equitable actions which are brought under federally created rights. The vast majority of school districts throughout the land which once operated dual systems have now functioned smoothly as unitary systems for a number of years. They again will be met with the turmoil that has once been conquered by the assertion of stale demands unless the school districts and the district courts in whose jurisdiction they are located are given the benefit of settled jurisprudence by the court. The writ of certiorari should be granted to resolve this important question of federal law.

Respectfully submitted,
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By: _____
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CERTIFICATE FOR SERVICE

I hereby certify that a copy of the foregoing petition for writ of certiorari was sent to R. James Kellogg, Howell, Kellogg & Bayer, 806 Perdido Street, Suite 401, New Orleans, Louisiana 70112 on the 12TH day of March 1981 in compliance with the rules of the Supreme Court of the United States.

_____

Stephen J. Katz

Appendix A

Johnnie PEGUES, Plaintiff - Appellant,

v.

MOREHOUSE PARISH SCHOOL BOARD et al.,

Defendants - Appellees.

No. 78-3757.

United States Court of Appeals,

Fifth Circuit.

Dec. 18, 1980.

Black coach sued parish school system complaining of alleged violations of Civil Rights Act and the *Singleton* mandates in refusal to name him to head football coach position when vacancy occurred therein following dismantling of former dual school system. The United States District Court for the Western District of Louisiana, Tom Stagg, J., rendered summary judgment for the school board, and plaintiff appealed. The Court of Appeals, Henderson, Circuit Judge, held that: (1) one-year prescriptive period governed Civil Rights Act claim, and (2) traditional laches inquiry was the proper manner in which to deal with tardiness of the *Singleton* claim, rather than dismissing such claim based on mere passage of time.

Affirmed in part; reversed and remanded in part.

1. Federal Courts 425

In actions under Civil Rights Act of 1871, the applicable statute of limitations is that which the state would apply if the suit had been brought in its courts. 42 U.S.C.A. § 1983.

2. Civil Rights 13.10

Louisiana's one-year prescriptive period governing actions resulting from offenses of quasi - offenses governed timeliness of action brought by black coach under Civil Rights Act of 1871 complaining that school board demoted him and repeatedly denied him promotions for racially discriminatory reasons. 42 U.SC.A. § 1983; LSA - C.C. art. 3536.

3. Schools 141(6)

Singleton, which governs criteria on reduction of staffs in dismantling a dual school system, does not require a displaced staff member to affirmatively seek out a position which he allegedly was discriminatorily denied; rather, he is entitled to special treatment unless and until he has failed to accept an offer to fill a vacancy and the school system must give dismissed or demoted personnel the right of first refusal when subsequent staff vacancies occur.

4. Equity 72(1)

Mere lapse of time is not sufficient to constitute laches; inexcusable delay and resulting undue prejudice are the essential elements of the defense.

5. Schools 141(5)

Singleton relief may not be denied merely on ground of passage of time; rather, the more traditional laches inquiry was the proper manner in which to deal with alleged delay by black coach in asserting claim of discriminatory demotion.

6. Equity 72(1)

"Prejudice" in the laches context, means disadvantage in asserting and establishing a claimed right or defense, or other damage caused by detrimental reliance on the plaintiff's conduct.

See publication Words and Phrases for other judicial constructions and definitions.

7. Federal Courts 616

As a general rule, a laches determination should be made by the trial court in the first instance.

Appeal from the United States District Court for the Western District of Louisiana.

Before BROWN, HENDERSON and SAM D. JOHNSON, Circuit Judges.

HENDERSON, Circuit Judge:

The appellant, Johnnie Pegues, filed this action for declaratory and injunctive relief in the United States District Court for the Western District of Louisiana alleging violations of 42 U.S.C.A. § 1983 and noncompliance with the mandates of *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir.) (en banc), *rev'd in part sub nom. Carter v. West Feliciana Parish School Board*, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477 (1970). The district court granted the defendant school board's motion for summary judgment, and Pegues appeals.

Pegues is a black coach and tenured teacher who has been employed by the Morehouse Parish School System since 1965. He was initially hired as the head football coach at the all-black Morehouse High School in Bastrop, Louisiana. The Bastrop schools were integrated in court order in 1969, and Pegues was assigned as an assistant football coach at the formerly all-white Bastrop High School. The school's head football coach, a white man, was retained until the end of the 1969-70 school year.

At that time, and again in 1972 and 1973, a new white head football coach was hired.[1] Pegues was never offered the job of head football coach. He continued as assistant coach until the 1977-78 school year, at which time he was named head track coach. He filed this action on March 3, 1978, seeking the head football coach position and back pay.

The Section 1983 Claim

As his first basis for relief, Pegues alleges that the school board demoted him and repeatedly denied him promotion for racially discriminatory reasons in contravention of 42 U.S.C.A. § 1983. The district court found this claim to be time-barred, and we agree.

[1,2] In § 1983 actions, the applicable statute of limitations is that which the state would apply if the suit had been brought in its courts. *Kissinger v. Foti,* 544 F.2d 1257 (5th Cir. 1977). The district court correctly applied the one-year limitation period prescribed by La.Civ.Code, Art. 3536 for actions resulting from "offenses or quasi-offenses." The implementation of this statute is in accord with this court's decision in *Page*

1. A white coach has again filled the position during the pendency of this appeal.

v. U.S. Industries, Inc. 556 F.2d 346 (5th Cir. 1977), cert. denied, 434 U.S. 1045, 98 S.Ct. 890, 54 L.Ed2d 796 (1978). There, we held that Art. 3536 governed an action under 42 U.S. C.A. § 1981 asserting racial discrimination in employment and seeking back pay, reasoning that Louisiana law would characterize the action as one sounding in tort. *See also Heyn v. Board of Supervisors of Louisiana State University*, 417 F.Supp. 603 (E.D.La.1976) (Art. 3536 held to control in a § 1983 action brought by a teacher against a university for wrongful denial of promotion.) Pegues filed his complaint nine years after his initial demotion, eight years after he was first passed over for promotion, and some five years after the last alleged discriminatory turnover of the head football coach position. Hence, the § 1983 action is untimely.

Pegues cites two alternative statutes of limitations in an attempt to preserve his claim. One is La.Civ.Code, Art. 3538, which provides a three-year limitation period for actions for salaries brought by "teachers of the sciences." Yet, even if Pegues' coaching assignment brings him within the admittedly archaic phrase "teacher of sciences," the three-year period is of no aid to him here. The other statute is La.Civ.Code, Art. 3544, which establishes a ten-year prescriptive period for actions not specifically covered in other statutes. Pegues maintains that the application of Art. 3544 is mandated by the decision of the Louisiana Court of Appeals in *McCoy v. Tangipahoa Parish School Board*, 308 So.2d 382 (La.App.), *writ denied*, 310 So.

2d 856 (1975). *McCoy*, however, concerned an action in which a tenured principal sought reinstatement after he was demoted to classroom teacher in violation of his contractual rights under Louisiana tenure law. Pegues, although a tenured teacher, does not have tenure as a coach. Moreover, even if he had sued for violation of his rights as a tenured teacher, which he did not, his claim most likely would have been classified under the provisions of Art. 3538, and not the special exception for principals which was employed in *McCoy*. Finally, we note that the use of both Art. 3538 and Art. 3544 was expressly rejected in *Page, supra*. Thus, we conclude that the district court correctly applied Art. 3536, and that Pegues is precluded from pursuing his § 1983 cause of action.

The Singleton Claim

The more difficult question is whether the district court correctly entered summary judgment against Pegues on his *Singleton* claim. The *Singleton* entitlements are equitable in nature, *Hardy v. Porter*, 546 F.2d 1165, 1168 (5th Cir. 1977), and, in pertinent part, are enunciated as follows:

> If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled

> through recruitment of a person of a race, color or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Singleton, 419 F.2d at 1218.

[3] The district court determined that Pegues was, in fact, "demoted" for purposes of *Singleton* protection.[2] This finding is not seriously challenged. The appellees do argue on appeal that this case falls outside the ambit of *Singleton* because Pegues, although he did discuss the matter with his superiors, never formally applied for the head coach position. However,

2. In this regard, the court stated:

> Although plaintiff apparently received no cut in pay, the change from head coach to assistant coach would appear to constitute a "demotion" because of the lessened responsibility, despite the alleged difference in size between the two high schools. *Singleton, supra,* 419 F. 2d at 1218. For the purposes of this motion, it is assumed that there was an overall reduction in the number of professional staff members employed by defendant in 1969-70, as a result of the demise of the dual school system. Thus, plaintiff was entitled to the protections of *Singleton* at the time of his demotion.

R., 147. *See also Lee v. Macon County Bd. of Ed.*, 453 F. 2d 1104 (5th Cir. 1971). *Cf. Lee v. Walker County School System*, 594 F.2d 156 (5th Cir. 1979) (where former black principal was reassigned as an administrative assistant at the county's largest high school, position was commensurate with his former position at a school one-half that size because the responsibilities and pay were comparable).

Singleton does not explicitly require this affirmative step on the part of the displaced staff member; rather, he is entitled to special treatment unless and until he had failed to *accept an offer* to fill a vacancy. The school system must give dismissed or demoted personnel "the right of first refusal" when subsequent staff vacancies occur. *Hardy v. Porter,* 546 F.2d at 1167.

[4] The district court entered summary judgment against Pegues not because *Singleton* is inapplicable to his situation, but because he delayed too long in filing his suit. Indeed, the motion for summary judgment, as it related to the *Singleton* problem, was grounded in the doctrine of laches. As mentioned earlier, Pegues filed this action nine years after his demotion, eight years after the first coaching change, and five years after the replacement which, for our present purposes, was the most recent. Nevertheless, the district court specifically disavowed any resolution of the laches issue. Rather, it held the claim to be barred by mere "passage of time."[3]

3. Mere lapse of time, of course, is not sufficient to constitute laches; inexcusable delay and resulting undue prejudice are the essential elements of the defense. *Law v. Royal Palm Beach Colony, Inc.* 578 F.2d 98 (5th Cir. 1978); *Weiszmann v. Dist. Eng'r,* 526 F.2d 1302 (5th Cir. 1976); *Am. Marine Corp. v. Citizens Cas. Co. v. N.Y.,* 447 F.2d 1328 (5th Cir. 1971).

We have been cited no authority, nor do we know of any, which supports this basis for denying *Singleton* relief.[4] The district court reasoned that to allow Pegues to enforce the *Singleton* requirements at this time would be contrary to "the principle that rules do not run beyond the reasons which occasion them," *Wright v. Houston Independent School District*, 569 F. 2d 1383, 1384 (5th Cir. 1978). *Singleton* entitlements are "aspects of equitable remedies, designed by this court under its general equitable power to fashion relief for constitutional violations (in this case, maintenance of a segregated, dual school system) in accordance with principles of fairness and with a minimum of hardship to persons affected by a large scale, court-ordered social change." *Hardy v. Porter*, 546 F. 2d at 1168. In essence, *Singleton* relieved "a distinct class of persons [from] the burden of proving individual acts of discrimination. . . . " R., 148. However, in the opinion of the district court, when a school system has been functioning smoothly on a unitary basis for several years, the weight of the equities shifts. At this point, the implementation of *Singleton* remedies would create more

4. Some distinguishing remarks may be helpful here. In *Lee v. Walker County School Sys.*, n.2, *supra*, we noted that "[t]he objective criteria requirement of Singleton does not apply . . . after a formerly segregated school system 'ha[s] for several years operated as a unitary system.' " 594 F.2d at 158 (citations omitted). That statement was made in reference to a situation in which the staff displacement (non-renewals of teachers' contracts) occurred several years after desegregation. Here, the district court explicitly found, for purposes of the summary judgment motion, that Pegues' demotion was the result of an overall desegregation–related reduction in the number of school staff members.

hardships than it would alleviate. Indeed, in the district court's words, it would "revive the very antagonisms which all parties have sought so diligently to dissipate; and this, without any finding of discrimination . . . ." R., 147.

[5-7] Although we do not totally disagree with this analysis, we believe that the more traditional laches inquiry is the proper manner in which to deal with the tardiness of this suit. As of yet, the district court has made no specific determination that Pegues is guilty of inequitable conduct. Instead, its decision was based on the mere fact of Pegues' prolonged inaction and the intervening change in circumstances in the school system. Whether this delay is inexcusable, and whether it has resulted in an actual prejudicial change in the appellees' position,[5] are the precise factual questions to be decided within the laches framework. These are also issues which cannot resolve on the existing record. As a general rule, the laches determination should be made by the trial court in the first instance. *Franks v. Bowman Transportation Co.*, 495 F.2d 398, 406 (5th Cir. 1974); *Kosty v. Lewis*, 319 F.2d 744, 749 (D.C.Cir. 1963), *cert. denied*, 375 U.S. 964, 84 S.Ct. 482, 11 L.Ed.2d 414 (1964).

5. Prejudice, in the laches context, means disadvantage in asserting and establishing a claimed right or defense, or other damage caused by detrimental reliance on the plaintiff's conduct. *Law v. Royal Palm Beach Colony, Inc.*, n.3, *supra; Esso Intern., Inc. v. S.S. Captain John*, 443 F.2d 1144 (5th Cir. 1971).

Indeed, the district court specifically noted in its memorandum ruling that "[w]hether the delay is excusable, and whether prejudice has resulted to defendants is the subject of dispute." R. p.149. Consequently, we have no alternative but to remand the laches issue for resolution by the district court. *Accord, Franks v. Bowman Transportation Co.*, 495 F.2d at 406; *American Marine Corp. v. Citizens Casualty Co. of New York*, 447 F.2d 1328, 1330 (5th Cir. 1971).

AFFIRMED in part; REVERSED and REMANDED in part.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JOHNNIE PEGUES

versus CIVIL ACTION NO. 78-0233

MOREHOUSE PARISH SHCOOL BOARD,
et al

(filed 10/24/78)

MEMORANDUM RULING

This action for a promotion and back pay comes before the court on defendant's motion for summary judgment. The heart of the motion is that plaintiff's action is barred by the passage of time. There is no dispute as to any fact material to this defense.

Plaintiff is a black teacher and coach who has been employed in the Morehouse Parish school system since 1965 when he was named head football coach at Morehouse High School in Bastrop. When the dual school system was dismantled by court order in 1969, the formerly all-black Morehouse High School became a junior high school and plaintiff was given the position of assistant football coach at the formerly all-white Bastrop High School. At the end of the 1969-70 school year, the position of head football coach changed hands, as it did in 1972 and again

in 1973. John Sullivan assumed the duties of head coach in 1973 and continued in that position at the time this suit was filed. Sullivan, like all those before him, is white.

Plaintiff was never offered the head coaching job. Although he did discuss it with his superiors, he never formally applied for the job, assuming that as an assistant he would naturally be considered. Plaintiff consulted an attorney in 1972 or 1973 concerning the defendant's failure to promote him to head coach, but decided not to pursue the matter through legal channels. Until the 1977-78 school year, when he served only as head track coach and physical education instructor, plaintiff had continued as assistant football coach on top of his track and teaching duties. This suit was filed on March 2, 1978. Mr. Pegues states that he refrained from suing earlier because he felt certain that the defendants would eventually promote him on his own merit. Instead, at the start of the 1977-78 school year he was relieved of all coaching responsibilities relating to football.

Plaintiff's complaint states two distinct causes of action. First, he claims that defendants demoted and denied him promotions on account of his race. This would amount to a deprivation of constitutional rights clearly cognizable under 42 U.S.C. § 1983. Second, plaintiff claims that the treatment he has recieved at the hands of defendants since 1969 has not been in accord with the mandates of *Singleton v. Jackson*

Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969) *(en banc) rev'd in part sub. nom, Carter v. West Feliciana Parish School Bd.*, 90 S.Ct. 608 (U.S. 1970). *See Wright v. Houston Independant School District*, 569 F.2d 1383 1385 (5th Cir. 1978) (claims under *Singleton* and § 1983 are distinct). The claims will be addressed in the order stated.

THE § 1983 CLAIM

Since neither § 1983 nor any other federal statute states the period of limitations for suits such as this, the most appropriate state statute of limitations will be applied. *Johnson v. Railway Express Agency, Inc.*, 95 S.Ct. 1716 (U.S. 1975); *Kissinger v. Foti*, 544 F.2d 1257 (5th Cir. 1977). Under Louisiana law, Louisiana Civil Code article 3536, actions for monetary and injunctive relief based on racial discrimination in employment prescribe in one year. *Page v. U.S. Industries, Inc.*, 556 F. 2d 346, 351-53 (5th Cir. 1977), *cert. denied*, 98 S.Ct. 890 (U.S. 1978). The court in *Page* expressly rejected the contention that the three-year period in art. 3538 (actions for teachers' salaries), or the ten-year period of art. 3544 (claims not specifically covered in other articles) govern employment discrimination actions. Moreover, plaintiff's reliance on *McCoy v. Tangipahoa Parish School Board*, 308 So.2d 382 (La. App. 1st Cir.), *writ denied*, 310 So.2d 856 (La. 1975), is misplaced because that case dealt with the failure to accord a teacher the rights attri-

butable to tenure – – contractual rights – – as opposed to the delictual rights involved here.

Plaintiff had not alleged or argued any circumstance which would suspend or toll the running of the limitation period, and the court is unable to find any. Nor are the demotion and failure to promote "continuing violations", *Woodburn v. LTV Aerospace Corp.*, 531 F.2d 750 (5th Cir. 1976); *see also Johnson v. Railway Express Agency, Inc.*, 95 S.Ct. 1716, 1723 n.13 (U.S. 1975). Accordingly, plaintiff may recover under § 1983 only for claims occurring on or after March 2, 1977. As the demotion occurred in 1969, and the last opportunity to promote plainitff was in 1973, the action is untimely.

THE SINGLETON CLAIM

Plaintiff's second claim is that defendants' demotion of and failure to promote him violated the August 31, 1970 Order of this Court in *United States v. Morehouse Parish School Board*, Civil Action No. 14,429 (W.D. La.).[1] That Order incorporated the provisions of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211, 1218 (5th Cir. 1970), regarding demotion:

> "If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will

1. The "nonracial objective criteria" required by *Singleton*, 419 F. 2d. at 1218, were developed by the Morehouse Parish School Board and confirmed by this court on April 13, 1971.

> result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Although plaintiff apparently received no cut in pay, the change from head coach to assistant coach would appear to constitute a "demotion" because of the lessened responsibility, despite the alleged difference in size between the two high schools. *Singleton, supra,* 419 F.2d at 1218. For the purposes of this motion, it is assumed that there was an overall reduction in the number of professional staff members employed by defendant in 1969-70, as a result of the demise of the dual school system. Thus, plaintiff was entitled to the protections of *Singleton* at the time of his demotion.

The issue presently before the court, however, is not so simple. For plaintiff did not file this action at the time of his demotion or of any of the coaching changes. Instead, for reasons known best to himself,[2] he waited until nine years after

2. Questions asked by defendants' counsel during the taking of plaintiff's deposition suggest that plaintiff repeatedly used his potential lawsuit as a lever to obtain favorable treatment from defendants for both himself and his wife, also employed by defendants. Plaintiff denies these allegations, explaining the delay as stated earlier. The dispute is not material to the dispostion of this motion.

the first coaching change, and five years after the demotion, eight years after the first coaching change, and five years after the most recent coaching change, until a time when the Morehouse Parish shcool system has long been functioning smoothly in a unitary status. Mr. Pegues now asks this court to enter an order which, rather than promoting the just and orderly transsition of the school system, will revive the very antagonisms which all parties have sought so diligently to dissipate; and this, without any findings of discrimination agains him. The court cannot conclude that the rules set down in Singleton were intended to have this result.

It bears emphasizing that this ruling does not deprive Mr. Pegues of a remedy for any wrong he may have suffered, but only of a benefit to which he is no longer entitled. First, his claims of racial discrimination, both in demoting and in failing to promote him, have been barred by the applicable statute of limitations for several years. Second, the rules stated in *Singleton* were not based on evidence of any discrimination in demoting or dismissing black educators during desegregation. Rather, *Singleton* sought to spare a distinct class of persons the burden of providing individual acts of discrimination by anticipating the occurrence of discrimination and ordering the appropriate remedial steps. The court also recognized the massive unrest that would follow court-ordered integration and was determined to

avoid the further disturbance and delay caused by the myriad of discrimination suits that would inevitably accompany such large-scale reductions in faculty and staff. As the Fifth Circuit Court of Appeals recently stated in *Hardy v. Porter,* 546 F.2d 1165, *1168, rehearing en banc denied,* 550 F.2d 41 (5th Cir. 1977):

> "*Singleton* entitlements are not constitutional rights. Both the requirement that displacements be effected only in accordance with written, objective criteria and the requirement that displaced personnel be given a right of first refusal of subsequent vacancies are standards of conduct imposed upon school boards under court order. They are aspects of equitable remedies, designed by this court under its general equitable power to fashion relief for constitutional violations (in this case, maintenance of a segregated, dual school system) in accordance with principles of fairness and with a minimun of hardship to persons affected by large scale, court-ordered social change. The question of their reach is for this court to decide on nonconsitutional grounds.

See also Lee v. Chambers County Board of Education, 533 F. 2d 132, 135 (5th Cir. 1976).

The district courts in this circuit have recently been counseled to interpret *Singleton* in light of "the principle that rules do not run beyond the reasons which occasion them." *Wright v. Houston Independent School District,* 569 F.2d 1383, 1384 (5th Cir. 1978). As the goals motivating *Singleton* would be disserved by the extension of its rules to this case, plaintiff's second claim must also be dismissed.

It is true that the Fifth Circuit Court of Appeals has never ruled that a claim under *Singleton* was barred by the passage of time. On those occasions on which the court has been presented with claims filed several years after the demotion or dismissal, the court has found *Singleton* inapplicable without mentioning the delay in filing suit. *Hereford v. Huntsville Board of Education,* 574 F.2d 268 (5th Cir. 1978); *Lee v. Russell County Board of Education,* 563 F.2d 1159 (5th Cir. 1977); *Hardy v. Porter,* 546 F.2d 1165 (5th Cir. 1977); *Roper v. Effington County Board of Education,* 528 F.2d 1025 (5th Cir. 1976).[3] The court's failure to make a point in *dictum* cannot, however, be taken to establish that the contrary is the law. Furthermore, the result reached herein relies not solely on plaintiff's delay, but equally on the change in circumstances since plaintiff's demotion and since Singleton was handed down.

Finally, all parties agree that laches would be a proper defense to this action. Whether the delay is excusable, and whether prejudice has resulted to defendants is the subject of dispute. This Ruling is not based upon the doctrine of laches, thus no evidence on these issues need be heard.

3. In *Lee v. Macon county Board of Education,* 453 F.2d 1104 (5th Cir. 1971), the court granted relief under *Singleton* even though nearly four years transpired between demotion and filing. *Lee* is clearly distinguished from the present case by the fact that suit was filed within eighteen months after *Singleton* was handed down and during the existence of the conditions which gave rise to *Singleton.* Moreover, the court was operating on the premise, overruled by *Hardy v. Porter, supra,* and other cases, that *Singleton* entitlements are constitutional rights. 453 F.2d at 1112, *et seq.*

The motion for summary judgment must be GRANTED.

THUS DONE AND SIGNED in chambers at Shreveport, Louisiana, this 23rd day of October, 1978.

/s/ TOM STAGG

TOM STAGG

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATED DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JOHNNIE PEGUES

versus CIVIL ACTION NO. 78-0233

MOREHOUSE PARISH SCHOOL BOARD,
et al (filed 10/24/ 78)

JUDGMENT

For the reasons assigned in the foregoing ruling,

IT IS ORDERED that plaintiff take nothing and that this action be dismissed at plaintiff's costs.

THUS DONE AND SIGNED in chambers at Shreveport, Louisiana, this 23rd day of October, 1978.

/s/ TOM STAGG
TOM STAGG
UNITED STATES DISTRICT JUDGE